

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

KIMBERLY ENTEADO by her subrogee STATE FARM FIRE & CASUALTY COMPANY and DAVID FEDEROFF v. HI-POWER CYCLES LLC; JOHN DOES 1- 10; and ABC CORPS. 1-10.	CIVIL ACTION NO.
---	------------------

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441(a) and 1446, Defendant Hi-Power Cycles, LLC, hereby gives notice of removal of this action from the Superior Court of New Jersey, Law Division, Cape May County, Docket No. L-000012-16 to the United States District Court for the District of New Jersey, and in support thereof aver as follows:

1. This matter was initiated on January 8, 2016, via the filing of a Complaint in the Superior Court of New Jersey, Law Division, Cape May County. A true and correct copy of Plaintiffs' Complaint is attached hereto as **Exhibit "A"**.¹

2. Personal service of the Plaintiffs' Complaint was made upon the defendant on or about January 25, 2016.

3. According to the Complaint, this action is commenced by Kimberly Enteado by her subrogee State Farm Fire & Casualty Company (hereafter "State Farm") and David Federoff. Per the Complaint, Ms. Enteado and Mr. Federoff reside at Plaintiffs reside at 36 Robin Drive, Cape May Court House, New Jersey 08210. Id.

4. Per the Complaint, State Farm has a place of business located at P.O. Box

¹ At the time of this writing, Plaintiff just filed an Amended Complaint which was served upon the undersigned but not yet docketed. The Amended Complaint names BME Bikes as a defendant in addition to those referenced in the above-caption. Per the Amended Complaint, BME Bikes is a California entity and thereby does not defeat diversity jurisdiction. A true and correct copy of Plaintiffs' Amended Complaint is attached hereto as **Exhibit "B."**

106110, Atlanta, Georgia, and upon information and belief, is headquartered in Illinois. Id.

5. Defendant, per the Complaint, has a place of business located at 2122 Nordhoff Street, Chatsworth, California 91311. Id.

6. Plaintiffs claim “severe and significant” property damage arising out of a fire allegedly caused by a malfunctioning electric bicycle manufactured, designed, and/or constructed by defendant. Id. at ¶¶2, 6,

7. The Complaint alleges “significant smoke and water damage and losses to plaintiff’s insured’s residence and their personal property, thereby necessitating past and future restoration, replacement and repair efforts” and also “alternative shelter and related living expenses . . .” Id. at Second Count ¶6 and Fourth Count, ¶4.

8. If a defendant seeks to remove a pending State court action, it “shall file in the district court of the United States for the district and division within which such action is pending a notice of removal . . .” 28 U.S.C. §1446(a).

9. The notice of removal “shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting for the claim for relief upon which such action or proceeding is based . . .” 28 U.S.C. §1446(b).

10. Pursuant to federal law, this Court “shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between – (1) citizens of different states; [and] (2) citizens of a State and citizens or subjects of a foreign state . . .” 28 U.S.C. §1332(a)(1)-(2).

11. In this case, there is complete diversity of citizenship between the parties, as the Plaintiffs are citizens of the State of New Jersey and Georgia/Illinois and the defendant is a citizen of the State of California.

12. Multiple correspondence from Plaintiffs' counsel indicates that Plaintiffs' are of the opinion the case has value in excess of \$75,000 and indeed, it is claimed State Farm has paid to its insured Ms. Enteadó in excess of this amount relative to the claimed incident.

13. As the amount in controversy in this case exceeds \$75,000, exclusive of interest and costs, and the threshold has been met for this Court to exercise diversity jurisdiction. Plaintiffs' counsel does not object to removal to this Honorable Court.

14. Therefore, this Court has original jurisdiction over the action pursuant to 28 U.S.C. §1332. There is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

15. This action is properly and timely removed pursuant to 28 U.S.C. §1441(a) and in accordance with the requirements of 28 U.S.C. §1446.

16. This notice of removal is being filed within thirty days after receipt of the Complaint and with confirmation and notice that the amount in controversy exceeds \$75,000, thereby fulfilling the requirements for invoking the diversity jurisdiction of this Court. 28 U.S.C. §1446(b).

17. Further, pursuant to 28 U.S.C. § 1446(d), Petitioner/Defendant are, concurrent with the filing of this Petition, providing notice of the removal of this matter to the Superior Court of New Jersey, Law Division, Cape May County, and to all parties.

WHEREFORE, Petitioner/Defendant Hi-Power Bicycles, LLC, hereby removes the above action now pending in the Superior Court of New Jersey, Law Division, Cape May County, to the United States District Court for the District of New Jersey.

Respectfully Submitted,

**WEBER GALLAGHER SIMPSON
STAPLETON, FIRES & NEWBY, LLP**

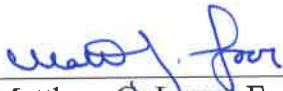
By: 
Matthew G. Laver, Esquire
Joseph Goldberg, Esquire
2000 Market Street, 13th Floor
Philadelphia, PA 19103
(215) 972-7900
Fax: (215) 564-7699
mlaver@wglaw.com
jgoldberg@wglaw.com
Attorneys for the Defendant
Hi-Power Cycles, LLC

Dated: February 23, 2016

CERTIFICATE OF SERVICE

I, Matthew G. Laver, Esquire, do hereby certify that on the date indicated below, I served via U.S. mail, postage prepaid, a true and correct copy of the within Notice of Removal on the following counsel of record:

Paul R. Duffy, Esq.
Kearns & Duffy, P.C.
3648 Valley Road, P.O. Box 56
Liberty Corner, New Jersey 07938



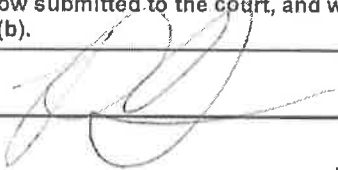


Matthew G. Laver, Esquire

Date: February 23, 2016

EXHIBIT “A”

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-1</i> Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i>, if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
			CHG/CK NO.	
			AMOUNT:	
				OVERPAYMENT:
				BATCH NUMBER:
ATTORNEY / PRO SE NAME Paul R. Duffy, Esq.		TELEPHONE NUMBER (908) 647-7773	COUNTY OF VENUE Cape May	
FIRM NAME (if applicable) Kearns & Duffy, P.C.		DOCKET NUMBER (when available)		
OFFICE ADDRESS 3648 Valley Road, P.O. Box 56 Liberty Corner, NJ 07938		DOCUMENT TYPE Complaint		
		JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
NAME OF PARTY (e.g., John Doe, Plaintiff) Kimberly Enteadó by her subrogee State Farm Fire & Casualty Company and David Federoff		CAPTION Kimberly Enteadó by her subrogee State Farm Fire & Casualty Company and David Federoff v. Hi-Power Cycles LLC; John Does 1-10; and ABC Corps. 1-10		
CASE TYPE NUMBER (See reverse side for listing) 699	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: 				

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1*

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 291 PELVIC MESH/GYNECARE |
| 278 ZOMETA/ARELIA | 292 PELVIC MESH/BARD |
| 279 GADOLINIUM | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 282 FOSAMAX | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 287 YAZ/YASMIN/OCELLA | 300 TALC-BASED BODY POWDERS |
| 288 PRUDENTIAL TORT LITIGATION | 601 ASBESTOS |
| 289 REGLAN | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category ☐ Putative Class Action ☐ Title 59

Paul R. Duffy, Esq., ID # 062141986
KEARNS & DUFFY, P.C.
3648 Valley Road, P.O. Box 56
Liberty Corner, New Jersey 07938
(908) 647-7773
Attorneys for Plaintiff
Our File No.: 9570D

KIMBERLY ENTEADO by her subrogee
STATE FARM FIRE & CASUALTY
COMPANY and DAVID FEDEROFF,

Plaintiff(s),

v.

HI-POWER CYCLES LLC; JOHN DOES
1-10; and ABC CORPS. 1-10,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
CAPE MAY COUNTY

DOCKET NO.:

Civil Action

COMPLAINT AND JURY DEMAND

Plaintiff, Kimberly Enteado by her subrogee State Farm Fire & Casualty Company, having a place of business located at P.O. Box 106110, Atlanta, Georgia 30348 and David Federoff, by way of complaint against defendants, Hi-Power Cycles LLC, with a place of business located at 21122 Nordhoff Street, Suite F-G, Chatsworth, California 91311; John Does 1-10; and ABC Corps. 1-10, alleges as follows:

FIRST COUNT

1. At all times relevant hereto, plaintiff, State Farm Fire & Casualty Company, did insure a home owned by Kimberly Enteado located at 36 Robin Drive in Cape May Court House, New Jersey 08210, Cape May County, New Jersey. State Farm Fire & Casualty Company did pay a claim for property damage caused and thereby has become subrogated to the rights of said Kimberly Enteado.

2. At all times relevant herein defendant, Hi-Power Cycles LLC (hereinafter "Hi-Power") was and is a corporation authorized to do business in the State of New Jersey who put their product in the stream of commerce in the State of New Jersey. Defendant, Hi-Power, held themselves out to be a business competent in the design, manufacture and construction of electric bicycles and, in particular, a BM-Supreme XCR a/k/a Stealth Bomber/Fighter Killer electric full-suspension 5,000-watt bicycle.

3. At all times relevant herein, the defendants, John Does 1-10 and ABC Corps. 1-10, were and are unidentified companies, corporations, contractors and/or persons involved in the design, manufacture, distribution and sale of the product referenced above and/or its component parts.

4. At all times relevant hereto, the defendants were under a duty to fully and properly control, inspect, maintain, repair and otherwise install its products in a safe manner, such as would reasonably provide for the protection and safety of persons who would be utilizing these products and more particularly, the plaintiff's insureds herein, and reasonably provide for the preservation of personal property in and about said products.

5. On or before June 18, 2014, plaintiff, David Federoff, purchased the above-referenced product pursuant to an ad on E-Bay. It was delivered to Mr. Federoff at his girlfriend's and plaintiff's insured, Kimberly Enteadó's, house located at 36 Robin Drive in Cape May Court House, New Jersey 08210. It came brand new, unused, unopened and undamaged in its' original packaging. Mr. Federoff used the electric bicycle that summer, without incident.

6. On or before May 4, 2015, Mr. Federoff used this electric bicycle for the first time

this season and returned it to the plaintiff's insured's home, into the garage, and re-connected the battery charger. Sometime thereafter, a failure occurred causing a fire to ignite and causing severe and significant property damage to the plaintiff's insured's property, as well as Mr. Federoff's property located in the garage.

7. As a direct and proximate result of the malfunction of the above-referenced product, the plaintiff's insured sustained severe and significant property damage to her home.

8. The defendants impliedly warranted that the subject electric bicycle was fit for its intended purpose, the purpose for which it was designed, that it was a safe and product to be used by plaintiff's insureds.

9. In purchasing and using the above-referenced electric bicycle, plaintiff's insured relied on defendants' skill and judgment in the implied warranty of fitness for use.

10. The above-referenced electric bicycle was, in fact, not fit for use for its intended purpose and as a result the defendants' breached their warranty of fitness for use, causing plaintiff's insureds to sustain severe and significant property damage.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

SECOND COUNT

1. Plaintiff repeats each and every allegation contained in the First Count as if fully set forth herein at length.

2. Defendant is engaged in the business of designing, manufacturing, constructing, assembling and inspecting electric bicycles.

3. On or about May 4, 2015 the electric bicycle referenced above located in plaintiff's insureds' residence malfunctioned, causing a fire to ignite and causing severe and significant property damage to the plaintiff's insured's property.

4. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insureds' home sustained significant smoke and water damage.

5. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insured and David Federoff also sustained substantial losses of personal property.

6. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insured was unable to continue living in her residence while repairs, replacement and restoration were completed and, thus, incurred significant costs and expenses in connection with alternative shelter and related living expenses during that period of time.

7. At the time of the fire, plaintiff's insured was insured under a homeowner's insurance policy through State Farm Fire & Casualty Company.

8. Pursuant to the terms of the plaintiff's insureds homeowner's insurance policy, State Farm Fire & Casualty Company has paid damages to date to its' insured and other entities involved in the repair, replacement and/or restoration of the plaintiff's insured's home.

9. Pursuant to the terms of the plaintiff's insured's homeowner's insurance policy, State Farm Fire & Casualty Company will be responsible for payment of future damage amounts incurred in connection with the repair, replacement and restoration of the plaintiff's insured's property.

10. The fire at the plaintiff's insureds' residence on May 4, 2015 was caused by a defect in the electric bicycle and/or its component parts referred to above.

11. Pursuant to the terms of the plaintiff's insured's homeowner's insurance policy with State Farm Fire & Casualty Company, plaintiff's insured subrogated her claims for damages resulting from the fire and related extinguishment efforts to State Farm Fire & Casualty Company.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

THIRD COUNT

(New Jersey Products Liability Act – N.J.S.A.2A:58C-1, et. seq.)

1. Plaintiff repeats each and every allegation contained in the First and Second Counts as if fully set forth herein at length.

2. Defendants had a duty to design and manufacture the above-referenced electric bicycle in such a manner that it would be reasonably fit, suitable and safe for its intended or reasonably foreseeable uses.

3. The above-referenced electric bicycle was not reasonable fit, suitable and safe for its intended or reasonably foreseeable uses because it was defectively designed, manufactured, constructed assembled or inspected in such a way as to cause the components contained therein to malfunction and cause the fire.

4. Defendants placed the defective above-referenced electric bicycle into the stream of commerce, knowing that it would be unreasonably dangerous while used in a normal and intended manner.

5. The above-referenced electric bicycle was defectively designed, manufactured, constructed, assembled or inspected before it left the control of defendants.

6. The above-referenced electric bicycle was unsafe for its intended purpose before it left the control of defendants.

7. On the date of the fire, plaintiff, David Federoff, was using the above-referenced electric bicycle properly for its intended and reasonably foreseeable purpose.

8. The plaintiffs were reasonably foreseeable users of the above-referenced electric bicycle.

9. The defective design, manufacture, construction, assembly or inspection of the above-referenced electric bicycle was a direct and proximate cause of all damages and losses sustained by plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, as a result of the fire and necessary extinguishment efforts.

10. Defendants are strictly liable for all damages and losses sustained by plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, as a result of the fire and related extinguishment efforts.

11. State Farm Fire & Casualty Company as subrogee of Kimberly Enteadó and David Federoff, are entitled to recover all amounts previously paid and to be paid in the future in connection with the damages and losses sustained by the plaintiff's insured as a direct and proximate result of the fire and necessary extinguishments efforts.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

FOURTH COUNT

(Breach of Express Warranties)

1. Plaintiff repeats each and every allegation contained in the First, Second and Third Counts as if fully set forth herein at length.

2. Defendants expressly and/or impliedly warranted and represented to the plaintiff's insured and all foreseeable users that the above-referenced electric bicycle was well designed, safely manufactured, constructed, assembled and inspected, nor inherently dangerous, and fit and proper for the uses and purposes intended for such a product, and further represented that the electric bicycle did not constitute a dangerous or hazardous condition to individuals utilizing said electric bicycle.

3. Defendants breached their express and implied warranties that the design, manufacture, construction, assembly and inspection of the above-referenced electric bicycle would be free from defects and in accordance with all applicable codes and standards.

4. As a direct and proximate result of the breach by defendants of its express and implied warranties, plaintiff's insured, Kimberly Entead, and plaintiff, David Federoff, sustained significant smoke and water damage and losses to plaintiff's insured's residence and their personal property, thereby necessitating past and future restoration, replacement and repair efforts.

5. State Farm Fire & Casualty Company as subrogee of Kimberly Entead and David Federoff are entitled to recover all amounts previously paid and to be paid in the future in connection with the damage and losses sustained by the plaintiff's insured and David Federoff as a direct and proximate result of the fire and related extinguishment efforts.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

FIFTH COUNT

1. Plaintiff repeats each and every allegation contained in the First, Second, Third and Fourth Counts as if fully set forth herein at length.

2. Defendants expressly and/or impliedly warranted and represented to the plaintiff's insured and all foreseeable users that the above-referenced electric bicycle was of merchantable quality and were safe and fit for its ordinary purposes and uses.

3. Plaintiff's insured and David Federoff relied upon the defendants expressed and/or implied warranties of merchantability and fitness for a particular purpose.

4. The warranties and representations by the defendants were false, misleading, inaccurate and otherwise untrue and the above-referenced electric bicycle and/or its component parts were not of merchantable quality and were, in fact, defective.

5. By reason of the foregoing, defendants breached their implied warranty of merchantability and fitness for a particular purpose and all other pertinent provisions of N.J.S.A. 2A:58C-1 et seq.

6. As a direct and proximate result of the aforementioned breach of warranties, plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, were caused to sustain severe property damage.

WHEREFORE, plaintiff demands judgment for compensatory and consequential damages against the defendants jointly, severally and in the alternative, together with interest,

statutory attorney's fees, and costs of suit.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Paul R. Duffy, Esq., is hereby designated as trial counsel on behalf of plaintiffs.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues so triable.

NOTICE PURSUANT TO RULE 1:5-1(a) AND RULE 4:17-4(c)

Take notice that the undersigned attorney does hereby demand, pursuant to Rules 1:5-1(a) and 4:17-4(c), that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories received from any other party, including documents, papers, deposition transcripts and other material referred to therein, upon the undersigned attorney. Take notice that this is a continuing demand.

DEMAND FOR INTERROGATORY ANSWERS

Pursuant to Rule 4:17-1(b)(1), demand is hereby made for the defendants to answer Product Liability Interrogatories pursuant to the Court Rules.

CERTIFICATION

Pursuant to R. 4:5-1, this is to certify that, to the best of our knowledge, this matter is not subject of any other action pending in any court or arbitration proceeding and none is contemplated.

Dated: January 4, 2016

By:

KEARNS & DUFFY P.C.
Attorney for Plaintiff


PAUL R. DUFFY

EXHIBIT “B”

KEARNS & DUFFY, P.C.

ATTORNEYS AT LAW

3648 VALLEY ROAD

P.O. BOX 56

LIBERTY CORNER, NEW JERSEY 07938

WILLIAM J. KEARNS
PAUL R. DUFFY*
MICHAEL C. VACCARO*

*ADMITTED TO PRACTICE IN N.J., N.Y. AND P.A.

(908) 647-7773
FAX: (908) 647-9434

SUBRO/LITIGATION
FAX: (908) 647-2314

ASSOCIATE:

MATTHEW F. GLUCK
www.kearnsduffy.com
paulrduffy@kearnsduffy.com

February 19, 2016

VIA FEDERAL EXPRESS
Clerk, Law Division
Cape May County Superior Court
9 North Main Street
Cape May Court House, NJ 08210

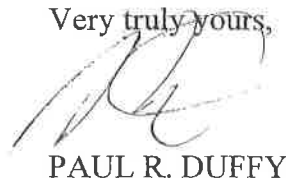
Re: Enteado v. Hi-Power Cycles LLC, et al.
Docket No.: CPM-L-12-16
Our File No.: 9570D

Dear Sir or Madam:

My office represents the plaintiff in connection with the above-referred matter. Enclosed herein please find the original and one copy of an Amended CIS and Amended Complaint. These documents are being forwarded to the Court for filing absent a formal motion, as no answers have been received to date.

Kindly file same, and return a "filed" copy to my office in the self-addressed stamped envelope provided for your convenience. Thank you for your anticipated cooperation with the above.

Very truly yours,



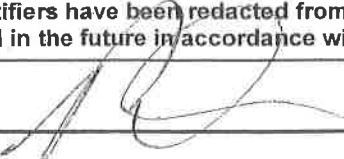


PAUL R. DUFFY

PRD:sg
Enclosures

Cc: Matthew G. Laver, Esq., w/enclosures, via e-mail

Appendix XII-B1

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			CHG/CK NO.		
			AMOUNT:		
		OVERPAYMENT:		BATCH NUMBER:	
ATTORNEY / PRO SE NAME Paul R. Duffy, Esq.		TELEPHONE NUMBER (908) 647-7773		COUNTY OF VENUE Cape May	
FIRM NAME (if applicable) Kearns & Duffy, P.C.		DOCKET NUMBER (when available)			
OFFICE ADDRESS 3648 Valley Road, P.O. Box 56 Liberty Corner, NJ 07938		DOCUMENT TYPE Complaint			
		JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
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DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN			
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.					
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION					
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> YES <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS			
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> No					
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION					
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION			
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?			
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .					
ATTORNEY SIGNATURE: 					

Side 2



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule 4:5-1***CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN | 290 POMPTON LAKES ENVIRONMENTAL LITIGATION |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 291 PELVIC MESH/GYNECARE |
| 278 ZOMETA/AREDIS | 292 PELVIC MESH/BARD |
| 279 GADOLINIUM | 293 DEPUY ASR HIP IMPLANT LITIGATION |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 295 ALLODERM REGENERATIVE TISSUE MATRIX |
| 282 FOSAMAX | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 297 MIRENA CONTRACEPTIVE DEVICE |
| 286 LEVAQUIN | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 287 YAZ/YASMIN/OCELLA | 300 TALC-BASED BODY POWDERS |
| 288 PRUDENTIAL TORT LITIGATION | 601 ASBESTOS |
| 289 REGLAN | 623 PROPECIA |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Putative Class Action☐ Title 59

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Liberty Corner, New Jersey 07938
(908) 647-7773
Attorneys for Plaintiff
Our File No.: 9570D

KIMBERLY ENTEADO by her subrogee
STATE FARM FIRE & CASUALTY
COMPANY and DAVID FEDEROFF,

Plaintiff(s),

v.

HI-POWER CYCLES LLC; BME BIKES;
JOHN DOES 1-10; and ABC CORPS. 1-
10,

Defendant(s).

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
CAPE MAY COUNTY

DOCKET NO.: CPM-L-12-16

Civil Action

**AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiff, Kimberly Enteado by her subrogee State Farm Fire & Casualty Company, having a place of business located at P.O. Box 106110, Atlanta, Georgia 30348 and David Federoff, by way of complaint against defendants, Hi-Power Cycles LLC, with a place of business located at 21122 Nordhoff Street, Suite F-G, Chatsworth, California 91311; BME Bikes, with a place of business located at 18247 Parthenia Street, Northridge, California 91325; John Does 1-10; and ABC Corps. 1-10, alleges as follows:

FIRST COUNT

1. At all times relevant hereto, plaintiff, State Farm Fire & Casualty Company, did insure a home owned by Kimberly Enteado located at 36 Robin Drive in Cape May Court House,

New Jersey 08210, Cape May County, New Jersey. State Farm Fire & Casualty Company did pay a claim for property damage caused and thereby has become subrogated to the rights of said Kimberly Enteadó.

2. At all times relevant herein defendant, Hi-Power Cycles LLC (hereinafter "Hi-Power") and BME Bikes (hereinafter "BME") were and are corporations authorized to do business in the State of New Jersey who put their product in the stream of commerce in the State of New Jersey. Defendants, Hi-Power and BME, held themselves out to be a business competent in the design, manufacture and construction of electric bicycles and, in particular, a BM-Supreme XCR a/k/a Stealth Bomber/Fighter Killer electric full-suspension 5,000-watt bicycle.

3. At all times relevant herein, the defendants, John Does 1-10 and ABC Corps. 1-10, were and are unidentified companies, corporations, contractors and/or persons involved in the design, manufacture, distribution and sale of the product referenced above and/or its component parts.

4. At all times relevant hereto, the defendants were under a duty to fully and properly control, inspect, maintain, repair and otherwise install its products in a safe manner, such as would reasonably provide for the protection and safety of persons who would be utilizing these products and more particularly, the plaintiff's insureds herein, and reasonably provide for the preservation of personal property in and about said products.

5. On or before June 18, 2014, plaintiff, David Federoff, purchased the above-referenced product pursuant to an ad on E-Bay. It was delivered to Mr. Federoff at his girlfriend's and plaintiff's insured, Kimberly Enteadó's, house located at 36 Robin Drive in Cape

May Court House, New Jersey 08210. It came brand new, unused, unopened and undamaged in its' original packaging. Mr. Federoff used the electric bicycle that summer, without incident.

6. On or before May 4, 2015, Mr. Federoff used this electric bicycle for the first time this season and returned it to the plaintiff's insured's home, into the garage, and re-connected the battery charger. Sometime thereafter, a failure occurred causing a fire to ignite and causing severe and significant property damage to the plaintiff's insured's property, as well as Mr. Federoff's property located in the garage.

7. As a direct and proximate result of the malfunction of the above-referenced product, the plaintiff's insured sustained severe and significant property damage to her home.

8. The defendants impliedly warranted that the subject electric bicycle was fit for its intended purpose, the purpose for which it was designed, that it was a safe and product to be used by plaintiff's insureds.

9. In purchasing and using the above-referenced electric bicycle, plaintiff's insured relied on defendants' skill and judgment in the implied warranty of fitness for use.

10. The above-referenced electric bicycle was, in fact, not fit for use for its intended purpose and as a result the defendants' breached their warranty of fitness for use, causing plaintiff's insureds to sustain severe and significant property damage.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

SECOND COUNT

1. Plaintiff repeats each and every allegation contained in the First Count as if fully

set forth herein at length.

2. Defendants are engaged in the business of designing, manufacturing, constructing, assembling and inspecting electric bicycles.

3. On or about May 4, 2015 the electric bicycle referenced above located in plaintiff's insureds' residence malfunctioned, causing a fire to ignite and causing severe and significant property damage to the plaintiff's insured's property.

4. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insureds' home sustained significant smoke and water damage.

5. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insured and David Federoff also sustained substantial losses of personal property.

6. As a direct and proximate result of the fire and related necessary extinguishment efforts, plaintiff's insured was unable to continue living in her residence while repairs, replacement and restoration were completed and, thus, incurred significant costs and expenses in connection with alternative shelter and related living expenses during that period of time.

7. At the time of the fire, plaintiff's insured was insured under a homeowner's insurance policy through State Farm Fire & Casualty Company.

8. Pursuant to the terms of the plaintiff's insureds homeowner's insurance policy, State Farm Fire & Casualty Company has paid damages to date to its' insured and other entities involved in the repair, replacement and/or restoration of the plaintiff's insured's home.

9. Pursuant to the terms of the plaintiff's insured's homeowner's insurance policy,

State Farm Fire & Casualty Company will be responsible for payment of future damage amounts incurred in connection with the repair, replacement and restoration of the plaintiff's insured's property.

10. The fire at the plaintiff's insureds' residence on May 4, 2015 was caused by a defect in the electric bicycle and/or its component parts referred to above.

11. Pursuant to the terms of the plaintiff's insured's homeowner's insurance policy with State Farm Fire & Casualty Company, plaintiff's insured subrogated her claims for damages resulting from the fire and related extinguishment efforts to State Farm Fire & Casualty Company.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

THIRD COUNT

(New Jersey Products Liability Act – N.J.S.A.2A:58C-1, et. seq.)

1. Plaintiff repeats each and every allegation contained in the First and Second Counts as if fully set forth herein at length.

2. Defendants had a duty to design and manufacture the above-referenced electric bicycle in such a manner that it would be reasonably fit, suitable and safe for its intended or reasonably foreseeable uses.

3. The above-referenced electric bicycle was not reasonable fit, suitable and safe for its intended or reasonably foreseeable uses because it was defectively designed, manufactured, constructed assembled or inspected in such a way as to cause the components contained therein to malfunction and cause the fire.

4. Defendants placed the defective above-referenced electric bicycle into the stream of commerce, knowing that it would be unreasonably dangerous while used in a normal and intended manner.

5. The above-referenced electric bicycle was defectively designed, manufactured, constructed, assembled or inspected before it left the control of defendants.

6. The above-referenced electric bicycle was unsafe for its intended purpose before it left the control of defendants.

7. On the date of the fire, plaintiff, David Federoff, was using the above-referenced electric bicycle properly for its intended and reasonably foreseeable purpose.

8. The plaintiffs were reasonably foreseeable users of the above-referenced electric bicycle.

9. The defective design, manufacture, construction, assembly or inspection of the above-referenced electric bicycle was a direct and proximate cause of all damages and losses sustained by plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, as a result of the fire and necessary extinguishment efforts.

10. Defendants are strictly liable for all damages and losses sustained by plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, as a result of the fire and related extinguishment efforts.

11. State Farm Fire & Casualty Company as subrogee of Kimberly Enteadó and David Federoff, are entitled to recover all amounts previously paid and to be paid in the future in connection with the damages and losses sustained by the plaintiff's insured as a direct and

proximate result of the fire and necessary extinguishments efforts.

WHEREFORE, plaintiff demands judgment against the defendants for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

FOURTH COUNT
(Breach of Express Warranties)

1. Plaintiff repeats each and every allegation contained in the First, Second and Third Counts as if fully set forth herein at length.

2. Defendant, BME, expressly and/or impliedly warranted and represented to the plaintiff's insured and all foreseeable users that the above-referenced electric bicycle was well designed, safely manufactured, constructed, assembled and inspected, nor inherently dangerous, and fit and proper for the uses and purposes intended for such a product, and further represented that the electric bicycle did not constitute a dangerous or hazardous condition to individuals utilizing said electric bicycle.

3. Defendant, BME, breached their express and implied warranties that the design, manufacture, construction, assembly and inspection of the above-referenced electric bicycle would be free from defects and in accordance with all applicable codes and standards.

4. As a direct and proximate result of the breach by defendant, BME, of its express and implied warranties, plaintiff's insured, Kimberly Enteadó, and plaintiff, David Federoff, sustained significant smoke and water damage and losses to plaintiff's insured's residence and their personal property, thereby necessitating past and future restoration, replacement and repair efforts.

5. State Farm Fire & Casualty Company as subrogee of Kimberly Enteadó and David

Federoff are entitled to recover all amounts previously paid and to be paid in the future in connection with the damage and losses sustained by the plaintiff's insured and David Federoff as a direct and proximate result of the fire and related extinguishment efforts.

WHEREFORE, plaintiff demands judgment against the defendant, BME, for compensatory damages, together with interest, statutory attorney's fees and costs of suit.

FIFTH COUNT

1. Plaintiff repeats each and every allegation contained in the First, Second, Third and Fourth Counts as if fully set forth herein at length.

2. Defendant, BME, expressly and/or impliedly warranted and represented to the plaintiff's insured and all foreseeable users that the above-referenced electric bicycle was of merchantable quality and were safe and fit for its ordinary purposes and uses.

3. Plaintiff's insured and David Federoff relied upon the defendant, BME's, expressed and/or implied warranties of merchantability and fitness for a particular purpose.

4. The warranties and representations by the defendants were false, misleading, inaccurate and otherwise untrue and the above-referenced electric bicycle and/or its component parts were not of merchantable quality and were, in fact, defective.

5. By reason of the foregoing, defendant, BME, breached their implied warranty of merchantability and fitness for a particular purpose and all other pertinent provisions of N.J.S.A. 2A:58C-1 et seq.

6. As a direct and proximate result of the aforementioned breach of warranties, plaintiff's insured, Kimberly Entead, and plaintiff, David Federoff, were caused to sustain severe property damage.

WHEREFORE, plaintiff demands judgment for compensatory and consequential damages against the defendants jointly, severally and in the alternative, together with interest, statutory attorney's fees, and costs of suit.

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Paul R. Duffy, Esq., is hereby designated as trial counsel on behalf of plaintiffs.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury of all issues so triable.

NOTICE PURSUANT TO RULE 1:5-1(a) AND RULE 4:17-4(c)

Take notice that the undersigned attorney does hereby demand, pursuant to Rules 1:5-1(a) and 4:17-4(c), that each party herein serving pleadings and interrogatories and receiving answers thereto, serve copies of all such pleadings and answered interrogatories received from any other party, including documents, papers, deposition transcripts and other material referred to therein, upon the undersigned attorney. Take notice that this is a continuing demand.

DEMAND FOR INTERROGATORY ANSWERS

Pursuant to Rule 4:17-1(b)(1), demand is hereby made for the defendants to answer Product Liability Interrogatories pursuant to the Court Rules.

CERTIFICATION

Pursuant to R. 4:5-1, this is to certify that, to the best of our knowledge, this matter is not subject of any other action pending in any court or arbitration proceeding and none is contemplated.

Dated: February 19, 2016

By:

KEARNS & DUFFY, P.C.
Attorney for Plaintiff


PAUL R. DUFFY